

REMARKS/ARGUMENTS

Claims 1-29 are pending in the application; the status of the claims is as follows:

Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 1-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/082,564.

Claims 1, 4-6, 17-21, 28 and 29 have been amended to correct matters of form. These changes do not introduce any new matter.

35 U.S.C. § 112 Rejection

The rejection of claims 1-29 under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, is respectfully traversed based on the following.

Claims 1, 4-6, 17-21, 28 and 29 have been amended to address the matters of form cited in the present Office Action. Claims 2, 3, 7-16 and 22-26 are dependent upon claim 1 and thus the corrections to claim 1 correct the matters of form related to these claims.

The Office Action states that claims “1, 28 and 29 are considered incomplete because it is essential to the instant process that the pond water comprised fluoride, phosphate, and silicic acid ...”. However, as noted at page 6, lines 20-25, the term “pond water” includes those materials. Therefore, fluoride, phosphate, and silicic acid are included in the claims by the use of the term “pond water.” Thus, there are no essential elements missing from the claims.

Accordingly, it is respectfully requested that the rejection of claims 1-29 under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, be reconsidered and withdrawn.

Double Patenting Rejection

The provisional rejection of claims 1-29 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/082,564, is respectfully traversed based on the following.

It is noted that section 804.02 of the MPEP states that:

A rejection based on a nonstatutory type of double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is made.

and further that:

The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection.

Accordingly, a terminal disclaimer prepared and executed in accordance with section 1490 of the MPEP is submitted herewith.

Accordingly, it is requested that the provisional rejection of claims 1-29 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/082,564, be reconsidered and withdrawn.

CONCLUSION

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge this fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.

Any fee required by this document other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.


Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee,



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Amendment dated January 28, 2004
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and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's
Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

By: 
Douglas A. Sorensen
Registration No. 31,570
Attorney for Applicants

DAS/fis:bar:jkk
SIDLEY AUSTIN BROWN & WOOD LLP
717 N. Harwood, Suite 3400
Dallas, Texas 75201
Direct: (214) 981-3482
Main: (214) 981-3300
Facsimile: (214) 981-3400
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